IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4506 of 1999

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT RECLAIM & RUBBER PRODUCTS LTD - Petitioner(s)
Versus
AMBALAL S PATEL - Respondent(s)

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Appearance :
MR KIRAN C RAVAL for Petitioner(s) : 1,
MR RE VARIAVA for Respondent(s) : 1,

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 25/09/2007

ORAL JUDGMENT

This is a petition preferred under Articles 226 and 227 of the Constitution of India by the Gujarat Reclaim and Rubber Products Limited (hereinafter

referred to as, **“the Company”**) against the judgment and award dated 22nd February, 1999 passed by the Labour Court, Bharuch in Reference LCB No.154/1990.

It appears that by order dated 28th January, 1980 the respondent-workman was appointed by the Company as a Clerk on the terms and conditions mentioned in the order of appointment. Clause (2) of the said order provided that, **“Although at present you are appointed in our factory, you will be liable to be transferred from any branch, department, section or office to any other branch, department, section or office”**. Pursuant to the said order, the workman resumed duty as a Clerk at Ankleshwar. By order dated 11th January, 1986, the workman, then a Stores Clerk, was transferred to Solapur works of the Company as a Stores Assistant. The workman was also offered certain incentives. The workman, however, did not obey the said order and refused to report at Solapur. He instead raised industrial dispute in respect of the said transfer order. Pending the conciliation proceeding, the disciplinary proceeding was held against the workman for disobeying the order of

transfer. On his being found guilty, he was discharged from service on 8th August, 1986. Pursuant to his discharge from service and failure of the conciliation proceedings, the appropriate Government, by its order dated 20th January, 1987, referred the dispute “whether the workman Ambalal S.Patel should be reinstated in service with back-wages” to the Labour Court, Baroda which, later on, came to be transferred to the Labour Court, Bharuch.

Before the Labour Court, the workman filed a statement of claim. According to the workman, as the workman had become member of the labour union and had taken-up union activities, he was transferred out of Ankleshwar as a punitive measure, with malafide intention. The reference was contested by the Company. The Company denied the allegations made in the statement of claim. The Company also challenged the very maintainability of the reference. The learned Labour Judge held that the transfer of the workman out of Ankleshwar was contrary to the terms of his appointment and that the said transfer was made with a view to removing the workman from

service. The learned Labour Judge, therefore, directed the Company to reinstate the workman in service and to pay him 50% of the back-wages. Feeling aggrieved, the Company has preferred the present petition.

Mr.Raval has assailed the very maintainability of the reference in respect of the discharge of the workman from service. He has submitted that the workman did not raise any dispute in respect of his discharge from service. Nor there was any conciliation proceeding in that respect. The reference made by the State Government was, therefore, beyond its jurisdiction and was made without the authority of law.

As to the order of transfer, he has submitted that the order of transfer was made in consonance with the terms of appointment of the workman and that the workman was also offered promotion as well as attractive incentives. The said order of transfer was made in view of the administrative necessity and not with malafide intention.

Mr.Variava has contested this petition. He has submitted that the workman was a lowly paid Stores Clerk. He could not afford to move to a far place like Solapur. He had also made a request to the Company to cancel the order of transfer keeping in view the circumstances and the financial conditions of the workman. He has agreed that the reference in respect of the discharge of the workman from service was premature.

This petition was admitted to final hearing and interim stay was granted subject to the compliance with Section 17-B of the Industrial Disputes Act, 1947 (hereinafter referred to as, **“the Act”**). Both the learned advocates agree that pursuant to the said order the workman has been paid the wages last drawn by him.

Though the workman did make allegations of malafide, the said allegations are not proved by evidence on record. As to the conditions of appointment, the above referred clause (2) has been

construed by the learned Labour Judge strictly in the terms i.e. the learned Labour Judge has held that the said clause did not refer to transfer from one place to another and, therefore, transfer of the workman from Ankleshwar to Solapur was not in consonance with the terms of his appointment. I beg to defer here. The said clause (2) does refer to transfer from one branch to another branch. It does not necessarily mean that the transfer should be from one branch to another within the town, it could be anywhere in India. In his application for appointment the workman had agreed to work at any place out of Bombay. Further, in my view, the reference in respect of the discharge of the workman from service made by the State Government under Section 10(1) of the Act was not maintainable. Admittedly, the workman had raised industrial dispute in respect of the order of his transfer but not in respect of his discharge from service. In absence of specific dispute raised by the workman, the reference made by the appropriate Government in respect of the discharge of the workman from service was without the authority of law. When the reference itself was not maintainable, the

judgment and award made by the Labour Court should necessarily be without the authority of law.

In above view of the matter, the petition is allowed. The impugned judgment and award dated 22nd February, 1999 made by the Labour Court, Bharuch in Reference LCB No.154/1990 is quashed and set-aside. The claim made by the workman stands rejected. Rule is discharged. The parties will bear their own cost.

(Ms. R.M.Doshit, J.)

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